



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	04/18/12	Bill No:	Assembly Bill 2059
Tax Program:	Sales and Use	Author:	Gorell and Achadjian
Sponsor:	BOE Member Runner	Code Sections:	RTC 6225 & 6225.1
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

This bill makes several changes related to the current Qualified Purchasers program. It would:

- Increase the gross receipts threshold for these qualified businesses from \$100,000 to \$500,000 annually.
- Authorize the BOE to grant a reasonable extension of time for filing returns pursuant to this program for up to six months, as specified.
- Authorize the BOE to grant a reasonable extension of time for payment of use tax pursuant to this program whenever good cause exists as determined by the BOE.
- Specify that the BOE shall grant an extension for filing returns pursuant to this program when a qualified purchaser has been granted an extension for Personal Income Tax and Corporate Income Tax filing.

ANALYSIS

CURRENT LAW

During 2009's Fourth Extraordinary Session, ABx4 18 (Ch. 16, in effect July 28, 2009) was enacted into law to impose a use tax registration and reporting obligation on larger businesses. Under these provisions, businesses (except for those already registered to report sales or use tax) that have annual gross receipts from business operations of at least \$100,000 annually, are required to register with the Board of Equalization (BOE) and file an annual use tax return on or before April 15th and report their purchases subject to use tax that were made during the previous calendar year.

Under existing law, the BOE has the general authority pursuant to Revenue and Taxation Code Section 6459 to extend for up to one month for good cause the time for making any return or payment, provided a request for the extension is filed with the BOE within or prior to the period for which the extension may be granted. Persons to whom an extension is granted may be relieved of the 10% late payment penalty for that 30 day period, but are required to pay interest on any unpaid tax from the date the tax was due until the date of payment.

Existing law also authorizes the BOE pursuant to Revenue and Taxation Code Section 6592 to relieve a person of the late payment penalty, when it finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. To be relieved of the penalty, Section 6592 requires that a request for relief be filed with the BOE.

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PROPOSED LAW

This bill will amend Revenue and Taxation Code Section 6225 and add Section 6225.1 to the Revenue and Taxation Code, to do the following:

- Increase the threshold amount of gross receipts from business operations per calendar year from \$100,000 to \$500,000. (Section 6225)
- Specify that the BOE may grant a reasonable extension of time for filing returns pursuant to this program for up to six months, as specified. (Section 6225.1)
- Specify that the BOE may grant a reasonable extension of time for payment of use tax pursuant to this program whenever good cause exists as determined by the BOE. (Section 6225.1)
- Specify that the BOE shall grant an extension for filing a return pursuant to this program if an extension is granted for filing a return for taxes imposed by Individual Income Tax Law (Part 10 (commencing with Section 17001)) or Corporate Income Tax Law (Part 11 (commencing with Section 23001)). (Section 6225.1)

BACKGROUND

Since the enactment of ABx4 18, the BOE has registered over 500,000 businesses and has received over \$85 million in use tax, interest, and penalties (about \$76 million is tax) from these businesses for reporting periods 2007, 2008, 2009, and 2010. However, over 85% of the returns filed under this provision have reported no use tax. At its July 27, 2011 meeting, the Members of the BOE unanimously approved the staff's recommendation to remove from the program, those qualified purchasers that have filed returns with zero use tax liability for three years in succession.

This program was intended to address the over \$1 billion use tax gap – which, at the time, was primarily a result of unreported use tax on business-to-business transactions. However, revenues derived from the program have fallen considerably short of the anticipated amounts. The implementation of this program resulted in significant confusion by business owners who had no previous relationship with the BOE, significant BOE costs to implement and administer, and a significant burden on taxpayers.

IN GENERAL

During the years 2007 through 2010, the number of annual returns filed by businesses with gross receipts between \$100,000 and \$500,000 averaged 272,346. However, over 65% of these returns reported zero tax due, with approximately 7.4% of these returns reporting use tax. The remaining returns are currently identified as delinquent. By reducing the number of businesses required to be registered, compliance with the program could be enhanced, and the burden on the BOE staff and businesses could be minimized.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by Senator George Runner (Ret.) to minimize the reporting requirements for businesses that do not have a use tax liability. According to the sponsor, while the Qualified Purchaser program currently requires individuals and businesses with gross receipts more than \$100,000 to

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register with the BOE, the BOE has found that the cost of tracking and following-up on qualified purchasers often exceeds the use tax collected by the BOE. A large majority of the qualified purchasers between the \$100,000 to \$500,000 range did not have any use tax to report.

- 2. Aligning the discretionary reporting extension with income tax returns.** Matching the extension period to that of state and federal income tax would lessen the burden for qualified purchasers.
- 3. Allowing an extension for payment of tax.** This provision provides a payment extension that is different than those for other sales and use tax accounts. Additionally, this provision does not specify if applicable interest or penalty apply if the payment extension is granted.
- 4. Automatic reporting extension.** Allowing an automatic extension would limit the BOE's ability to review and evaluate the request for good cause. If the qualified purchaser provides information to show that they received an extension from the income tax law, the BOE extension would be automatic.
- 5. Suggested technical amendments.** Section 6225 (d) should be amended to also exclude a mobilehome and commercial coach that is required to be registered annually pursuant to the Health and Safety Code.

COST ESTIMATE

BOE would incur costs associated with revising forms, letters, and publications due to the changes in the Qualified Purchaser program. These costs are expected to be absorbable.

The elimination of businesses that are required to report use tax would impact the existing resources currently devoted to the program. However, the impact would not be in direct correlation to the number of businesses eliminated from the program. We fully anticipate a percentage of the business to continue to report use tax to the BOE through other available reporting options. Accordingly, some of the work being done under this program will shift to these other reporting areas. The elimination of businesses from the program will require the BOE to reevaluate its current allocation of resources and we would fully expect to achieve efficiencies by reassigning staff from less productive assignments associated with the eliminated business and direct them to work more productive assignments.

REVENUE ESTIMATE

By re-assigning staff to more productive workload, BOE can achieve a revenue neutral outcome. Currently, use tax receipts received from qualified purchasers with gross receipts in the range of \$100,000 to \$500,000 are approximately \$2.3 million per year. Research indicates that revenues in the Qualified Purchasers program are likely to grow at rates closely associated with business spending on equipment and software to an amount of \$2.7 million for fiscal year 2013-14. Our projections of future growth are based on the most recent forecast of business equipment and software made by IHS Global Insight, a national economic forecasting firm.

However, with the increased exposure and outreach efforts we would expect to see that approximately 40% of the eliminated businesses would continue to report applicable use tax using the other available reporting options. Additionally, we believe that approximately 10% of the remaining eliminated businesses would be identified under BOE's remaining use tax programs, such as the In-State Services, Agricultural Station,

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and U.S. Customs. The adjusted revenue loss estimated for FY 2013-14 is \$1.46 million.

Increasing the gross receipts threshold to \$500,000 annually for the Qualified Purchaser program will allow the BOE to redirect two to three collection staff to more productive use tax collection activities. The redirection of this staff is estimated to generate increased revenue between \$1.4 million and \$2.1 million annually. This increased revenue will effectively offset the estimated revenue loss resulting in a revenue neutral outcome.

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